
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

LEVON DANDRUS TOLBERT, #33569-077 §

versus

UNITED STATES OF AMERICA

§
§
§
§

CIVIL ACTION NO. 4:16-CV-792
CRIMINAL ACTION NO. 4:13CR00225-001

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that Levon Dandrus Tolbert's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 should be dismissed without prejudice. The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and adopts same as the findings and conclusions of the Court.

It is accordingly **ORDERED** that Levon Dandrus Tolbert's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice. The dismissal of the present § 2255 motion without prejudice does not count as a first § 2255 motion for purposes of a "second or successive" § 2255 motion. *See Castro v. United States*, 540 U.S. 375, 383 (2003).

It is further **ORDERED** that the Clerk of Court shall file the 18 U.S.C. § 3582(c)(2) Motion (#1) in Criminal Number 4:13CR00225-001.

It is finally **ORDERED** that all motions by either party not previously ruled upon are **DENIED**.

SIGNED at Beaumont, Texas, this 5th day of June, 2017.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive style with a horizontal line underneath it.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE